



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,732	10/02/2003	Brian Hernacki	SYMAP032	4884
21912	7590	01/25/2007	EXAMINER	
VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014			LEMMA, SAMSON B	
		ART UNIT		PAPER NUMBER
				2132

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/677,732	HERNACKI ET AL.
	Examiner Samson B. Lemma	Art Unit 2132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 October 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

1. This is in reply to application filed on October 02/2003. **Claims 1-20** are pending/examined.

Priority

2. This application does not claim priority. Therefore, the effective filing date for the subject matter defined in the pending claims of this application is **10/02/2003**.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claims 19-20** are rejected under 35 U.S.C. 101 because the subject matter is directed to non-statutory subject matter.

5. **Claim 19** is directed to a computer program product for remotely activating a covert service channel. Though the computer program product is being embodied in the computer readable medium, the examiner asserts that the last limitation of the above claim, in particular “opening the covert service channel on the target host to allow a connection with the remote host” is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. See MPEP § 2106 IV. B. 1(a). Therefore the claim is a program per se and does not fall within the statutory classes listed in 35 USC 101.

6. **Claim 20** is directed to a data signal embodied in carrier wave. The **instructions** is not embodied in appropriate medium to form the basis of statutory subject matter under 35 U.S.C. 101. Furthermore, the examiner asserts that the last limitation of the above claim, in particular “instructions for **opening the covert service channel on the target host to allow a connection with the remote host**” is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application **producing tangible result** to form the basis of statutory subject matter under 35 U.S.C. 101. See MPEP § 2106 IV. B. 1(a). Therefore the claim is a program per se and does not fall within the statutory classes listed in 35 USC 101.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. **Claims 1, 11, 16-20** are rejected under 35 U.S.C. 102(e) as being anticipated by **Dalgic et al** (hereinafter referred as **Dalgic**) (U.S. Patent No. 7,024,478) (Filed on August 14, 2000)

9. **As per independent claims 1, 11, 16-20 Dalgic discloses a method for remotely activating a service channel comprising:**

- **Using a transport mechanism to send a trigger from a remote client to a host; [column 7, lines 6-8] (wherein said hub/switch is for detecting a**

connection to a portable computer system and for performing authentication in response thereto);

- **Receiving the trigger; [Column 7, lines 9-11] (wherein said cradle is for receiving user authentication data from said portable computer system and transmitting said user authentication data to said server);**
- **Authenticating the trigger; and opening the service channel to allow a connection with the remote host. [Column 7, lines 12-20] (wherein said server is for opening a port on said hub/switch allowing said ethernet phone to communicate voice data over said LAN and also allowing said cradle access to said LAN provided said authentication is successful and otherwise for causing said hub/switch to block said ethernet phone and said cradle from accessing said LAN and said server for closing said port in response to detecting operational variations that are unfamiliar to said LAN.)**

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 2-10 and 12-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dalgic et al** (hereinafter referred as **Dalgic**) (U.S. Patent No. 7,024,478) (Filed on August 14, 2000) in view of **Tarquini et al** (hereinafter referred as **Tarquini**) (U.S. Publication No. 2003/0101353) (Filed on October 31, 2001)

12. **As per dependent claims 2-10 and 12-15 Dalgic discloses a method for remotely activating a service channel comprising:**

- **Using a transport mechanism to send a trigger from a remote client to a host; [column 7, lines 6-8]** (*wherein said hub/switch is for detecting a connection to a portable computer system and for performing authentication in response thereto*);
- **Receiving the trigger; [Column 7, lines 9-11]** (*wherein said cradle is for receiving user authentication data from said portable computer system and transmitting said user authentication data to said server*);
- **Authenticating the trigger; and opening the service channel to allow a connection with the remote host. [Column 7, lines 12-20]** (*wherein said server is for opening a port on said hub/switch allowing said ethernet phone to communicate voice data over said LAN and also allowing said cradle access to said LAN provided said authentication is successful and otherwise for causing said hub/switch to block said ethernet phone and said cradle from accessing said LAN and said server for closing said port in response to detecting operational variations that are unfamiliar to said LAN.*)

Dalgic does not explicitly disclose the method remotely activating the service channel, using a transport mechanism to send a trigger further includes using a protocol to format the transport mechanism.

Furthermore Dalgic does not disclose remotely activating a service channel as recited wherein opening the service channel on the host further includes sending a reply to the remote client.

However, in the same field of endeavor **Tarquini**, discloses the feature of remotely activating the service channel, using a transport mechanism to send a

trigger further includes using a protocol to format the transport mechanism.

[See the feature of NMAP, paragraph 0043-0046]

Furthermore, **Tarquini**, discloses the feature of remotely activating a service channel as recited wherein opening the service channel on the host further includes sending a reply to the remote client, and the rest of the features recited in the dependent claims.**[See the feature of NMAP, paragraph 0043-0046]**

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to combine the basic feature of Nmap as per teachings of **Tarquini**, into the method taught by **Dalgic** in order to detect intrusion at a node. **[See abstract, Tarquini]**

13. **Claims 1, 11, 16-20** are also rejected under 35 U.S.C. 102(e) as being anticipated by **Tonnby et al** (hereinafter referred as **Tonnby**) (U.S. Publication No. 2005/0163131 A1) (Filed on 01/7/2003)

14. **As per independent claims 1, 11, 16-20 Tonnby discloses a method for remotely activating a service channel comprising:**

- **Using a transport mechanism to send a trigger from a remote client to a host; Receiving the trigger; Authenticating the trigger; and opening the service channel to allow a connection with the remote host. [Paragraph 0119] (For the handler of mobile service agents to determine if the user is allowed to attach at a new user port various methods can be used to ensure the authenticity of the roaming device. For wired scenarios, where a user disconnects the Ethernet wire and reconnects it at another port it may suffice that it is checked that the device MAC address is no longer connected to the previous user port. However in general, and in particular when using WLAN access methods a more secure method is**

needed. To achieve this, an authentication procedure, such as described in [4] is triggered by the handler of mobile service bindings, and only upon successful authentication the penult is informed to open the user port for the mobile service binding.)

15. Claims 2-10 and 12-15 are also rejected under 35 U.S.C. 103(a) as being unpatentable over **Tonnby et al** (hereinafter referred as **Tonnby**) (U.S. Publication No. 2005/0163131 A1) (Filed on 01/7/2003) in view of **Tarquini et al** (hereinafter referred as **Tarquini**) (U.S. Publication No. 2003/0101353) (Filed on October 31, 2001)

16. As per dependent claims 2-10 and 12-15 **Tonnby** discloses a method for remotely activating a service channel comprising:

- *Using a transport mechanism to send a trigger from a remote client to a host; Receiving the trigger; Authenticating the trigger; and opening the service channel to allow a connection with the remote host. [Paragraph 0119] (For the handler of mobile service agents to determine if the user is allowed to attach at a new user port various methods can be used to ensure the authenticity of the roaming device. For wired scenarios, where a user disconnects the Ethernet wire and reconnects it at another port it may suffice that it is checked that the device MAC address is no longer connected to the previous user port. However in general, and in particular when using WLAN access methods a more secure method is needed. To achieve this, an authentication procedure, such as described in [4] is triggered by the handler of mobile service bindings, and only upon successful authentication the penult is informed to open the user port for the mobile service binding.)*

Tonnby does not explicitly disclose the method remotely activating the service channel, using a transport mechanism to send a trigger further includes using a protocol to format the transport mechanism.

Furthermore Tonnby does not disclose remotely activating a service channel as recited wherein opening the service channel on the host further includes sending a reply to the remote client.

However, in the same field of endeavor Tarquini, discloses all the feature of remotely activating the service channel, using a transport mechanism to send a trigger further includes using a protocol to format the transport mechanism. **[See the feature of NMAP, paragraph 0043-0046]**

Furthermore, **Tarquini**, discloses the feature of remotely activating a service channel as recited wherein opening the service channel on the host further includes sending a reply to the remote client, and the rest of the features recited in the dependent claims.**[See the feature of NMAP, paragraph 0043-0046]**

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to combine the basic feature of Nmap as per teachings of **Tarquini**, into the method taught by **Tonnby** in order to detect intrusion at a node. **[See abstract, Tarquini]**

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.(See PTO-Form 892).
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samson B Lemma whose telephone number is 571-272-3806. The examiner can normally be reached on Monday-Friday (8:00 am---4: 30 pm).

Art Unit: 2132

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BARRON JR GILBERTO can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 703-873-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SAMSON LEMMA

S.L.
01/12/2007

Gilberto Barron Jr
GILBERTO BARRON JR
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100